UNITED STATES HOUSE OF REPRESENTATIVES
OFFICE OF THE MAJORITY WHIP
THE HONORABLE JAMES E. CLYBURN (SC-06)

THE WHIP PACK

WEEK OF SEPTEMBER 22, 2008

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Bill Text and Background for the Week of September 22, 2008

- H.R. 5244 - the Credit Cardholders' Bill of Rights Act of 2008
- NOTE: ADDITIONAL LEGISLATION TO BE ADDED WHEN FINALIZED

H.R. 5244 – THE CREDIT CARDHOLDERS' BILL OF RIGHTS ACT OF 2008*(Rep. Maloney – Financial Services) (Subject to a Rule)*

Bill Text: HTML Version, PDF Version
Bill Summary and Status
Rules Committee Meeting: Monday, September 22, 2008 at 5:00 p.m. in H-313 the Capitol, Special Announcement, **Meeting Time:** 5:00pm Monday 9/22, Text of Bill as Reported, Financial Services Committee Report
Committee: Committee on Financial Services
Committee Staff Contact: 5-4247

LEGISLATION AT A GLANCE:

Summary of the Credit Cardholders' Bill of Rights
H.R. 5244, the "Credit Cardholders' Bill of Rights," provides crucial protections against unfair, but unfortunately common, credit card practices.

Ending Unfair, Arbitrary Interest Rate Increases

Problem: Credit card issuers can arbitrarily raise interest rates, even on customers who pay on time and don't go over their credit limit. Fine print in most card agreements allows rate increases for reasons completely unrelated to a customer's use of the card – such as a decline in their credit score, using most of their credit line, default on a different debt, or even "general economic conditions." These increases apply to existing balances as well as future purchases, driving up debt burdens and making it much harder for consumers to pay their bills. The Federal Reserve has concluded that allowing companies to raise rates on existing balances – retroactively changing the deal – is unfair and deceptive, anticompetitive, and stops the forces of the free market from working to reduce rates.

Solution:

- The bill prevents card companies from unfairly increasing interest rates on existing card balances – retroactive increases are permitted only if a cardholder is more than 30 days late, if a promotional rate expires, or if the rate adjusts as part of a variable rate.
- If a consumer becomes more risky, a card company can charge them more for new credit or reduce their line of credit, but the consumer can pay off the old balance at the previous rate.
- The bill also requires card companies to give 45 days notice of *all* interest rate increases so consumers can pay off their balances and shop for a better deal.

Giving Consumers Control Over Credit Limits, Ending Excessive "Over-the-Limit" Fees

Problem: Most card companies currently don't give cardholders the option of setting real limits on their own accounts. Instead, the companies decide what a cardholders' limits should be, allow them to exceed those limits, then hit them with fees and/or rate increases for doing so. Most card companies penalize cardholders who spend beyond their credit ceiling by hitting them repeatedly with "over-the-limit" fees averaging $39 each.

Solution:

- Requires companies to let consumers set their own fixed credit limit.

- Prevents companies from charging “over-the-limit” fees when a cardholder has set a limit, or when a preauthorized credit “hold” pushes a consumer over the limit.

- Limits (to 3) the number of over-the-limit fees companies can charge for the same transaction – some issuers now charge virtually unlimited fees for a single limit violation.

Ending Unfair Penalties for Cardholders Who Pay on Time

Problem: “Double-cycle billing” is a confusing practice some companies employ to unfairly boost interest charges. If a consumer does not pay off a bill in full in a given cycle, the company charges interest on the *entire balance* from the previous cycle, even if the cardholder paid part of it off. Card companies can also slap fees or charge interest on residual interest-only balances of cardholders who pay in full and on time. Cardholders usually don’t realize this remaining interest exists and are surprised when they get a hefty late fee or rate increase for not paying it off.

Solution:

- Ends unfair “double cycle” billing – card companies can’t charge interest on debt consumers have already paid on time.

- If a cardholder pays on time and in full, the bill prevents card companies from piling additional fees on balances consisting solely of left-over interest.

Requiring Fair Allocation of Consumer Payments

Problem: Card companies benefit – and cardholders lose – when cardholders pay off lower-rate balances and let higher-rate balances accrue more interest. Currently most companies allocate payments to lower-rate balances first, and consumers have little say in the matter. The Federal Reserve concluded it was unfair and deceptive to prevent cardholders from paying off any of their high rate balances .

Solution:
- The bill generally requires payments to be allocated proportionally to balances that have different rates, so consumers have a chance to pay down their high-rate debt.

Protecting Cardholders from Due Date Gimmicks

Problem: Currently, card companies are allowed to mail billing statements 14 days before the due date. Mail delays and other problems can leave cardholders with less than a week to get their payment back to their card company, increasing the likelihood of a payment being declared “late” and being hit with a hefty late fee and a retroactive rate increase.

Solution:
- The bill requires card companies to mail billing statements 25 calendar days before the due date (up from the current 14 days), and to credit as “on time” payments made before 5 p.m. local time on the due date.

Stopping Companies from Using Misleading Terms and Damaging Consumers' Credit Ratings

Card companies can currently define the terms "fixed rate" and "prime rate" pretty much as they wish. This can lead to confusion among cardholders and prevents fair competition. In addition, some card companies report cards to credit bureaus before consumers have formally accepted the cards, which can adversely affect their credit reports.

Solution:

- Establishes standard definitions of terms like "fixed rate" and "prime rate" so companies can't mislead or deceive consumers in marketing and advertising.
- Gives consumers who are pre-approved for a card the right to reject that card prior to activation without negatively affecting their credit scores.

Protecting Vulnerable Consumers From High-Fee Subprime Credit Cards.

Problem: Subprime credit cards are marketed to people with poor credit histories and who may have trouble getting a regular credit card. In addition to high interest rates, these cards have hefty fixed fees that often exceed 25 percent of the available credit. Many companies now charge those fees to the card itself, so that before the consumer even makes a purchase, they are in debt and have consumed a large portion of their credit line.

Solution:

- The bill prohibits issuers of subprime cards (where total yearly fixed fees exceed 25 percent of the credit limit) from charging those fees to the card itself.

Protecting Vulnerable Minors

Problem: Card companies increasingly market cards to minors who are ill-prepared to use them, which can place these new consumers in a downward debt spiral before they're even old enough to vote.

Solution:

- The bill prohibits card companies from knowingly issuing cards to individuals under 18 who are not emancipated minors.

House Report 110-857:
HTML Version, PDF Version

Full Committee on Financial Services:
Full Committee Markup: H.R. 6308, H.R. 5772, H.R. 5244, H.R. 6078, H.R. 840, July 30, 2008

- Financial Services Report: Financial Services Panel OKs Credit Cardholders' Bill of Rights

Summary of Committee Votes:

- Rep. Hensarling, R-Texas Repeated Irresponsibility Amendment to the Substitute Amendment —Would have added to the bill a provision allowing credit card companies to raise rates for a repeated history of irresponsibility. The amendment would have allowed credit card companies to institute higher rates after three missed payments over the life of the card. **Rejected by Voice Vote.**
- Rep. Ellison, D-Minn. Payment with Credit Amendment to the Substitute Amendment — Prohibits the payment of any fees by credit from the credit card. **Adopted by Voice Vote.**
- Rep. Hensarling, R-Texas Cards for Minors to the Substitute Amendment — Adds the word "knowingly" to the section of the bill prohibiting credit card companies from issuing cards to minors. **Adopted by Voice Vote.**
- Rep. Ackerman, D-N.Y. Electronic Payments Amendment to the Substitute Amendment — Would have prevented credit card companies from assessing fees to customers for using electronic payments in all cases except express payments. **Rejected 27-39: R 1-28; D 26-11; I 0-0.**
- Rep. Hensarling, R-Texas Predatory Borrowing Amendment to the Substitute Amendment — Would have penalized borrowers for knowingly providing false or inaccurate information to credit card companies in the process of obtaining a card. **Rejected 30-37: R 30-0; D 0-37; I 0-0.**
- Rep. Hodes, D-N.H. Fed Effective Date Amendment to the Substitute Amendment — As amended by the Watt, D-N.C., substitute amendment that would encourage the Federal Reserve to promulgate rules by Dec. 31, 2008, after which the rules would be applied to transactions 30 days after the promulgation, eliminating the possibility of retroactive lawsuits. The amendment would give the Fed until Dec. 31, 2008 to finalize the rules, after which the bill would take effect if the rules had not been finished. If the Fed finalizes rules before that time, the bill would be nullified. **Adopted by Voice Vote.**
    - Rep. Castle, R-Del. Effective Date Second degree amendment to the Hodes, D-N.H., amendment to the Maloney, D-N.Y., substitute amendment — Changes the effective date for the Federal Reserve to promulgate its final credit card rules to Feb. 25, 2009 from Dec. 31, 2008. **Adopted by Voice Vote.**
    - Rep. Watt, D-N.C. Sense of Congress to Fed Substitute amendment to the Hodes, D-N.H., amendment to the Maloney, D-N.Y., substitute amendment — Encourages the Federal Reserve to promulgate rules by Dec. 31, 2008, after which the rules would be applied to transactions 30 days after the promulgation, eliminating the possibility of retroactive lawsuits. **Adopted 58-9: R 31-0; D 27-9; I 0-0.**
- Rep. Hensarling, R-Texas Repayment Failures Amendment to the Substitute Amendment — Would have struck the section of the amendment that states a failure to make a payment would not subject the user to a late fee. **Withdrawn Without Objection.**
- Rep. T. Price, R-Ga. Class Action Liability Amendment to the Substitute Amendment — Would have prohibited any new class action liability under the legislation. **Rejected 30-37: R 30-0; D 0-37; I 0-0.**

- Rep. Castle, R-Del. Substitute Amendment to the Substitute Amendment — Would have required a sense of Congress that credit card rulings and protections be considered upon and studied and the final ruling from the Federal Reserve be supported. **Rejected 28-39: R 28-2; D 0-37; I 0-0.**

- Rep. C. Maloney, D-N.Y. Substitute Amendment — Prevents card companies from retroactively increasing interest rates on the existing balance of a cardholder in good standing for reasons unrelated to the cardholder's behavior with that card, a practice which is sometimes referred to as universal default. The bill also would prohibit the retroactive application of an interest rate increase on existing balances unless the customer is more than 30-days late. The bill also would:

    - Require all of the payment allocated to the higher interest rate balance when a promotional rate applies to a lower interest rate balance.
    - Prohibit the issuance of credit cards to individuals under the age of 18.
    - Place a limit on over-the-limit fees that prohibits an over-the-limit fee when the only reason for the fee was the result of a pre-authorization hold.
    - Require card companies give cardholders 45 days notice of any interest rate increases.
    - Give cardholders the right to cancel their card and pay off their existing balance at the existing interest rate and repayment schedule if they get hit with an interest rate hike.
    - Give cardholders three billing cycles after the rate increase to say no to these new terms.
    - Prohibit card companies from arbitrarily changing the terms of their contract with a cardholder.
    - Prohibit card companies from charging interest on debt that is paid on time during a grace period.
    - Prohibit card companies from placing fees on the remaining interest-only balance of a cardholder who has paid a bill on time.
    - Require card companies to mail billing statements 25 calendar days before the due date (14 days is the current minimum).
    - Require that payments made before 5 p.m. EST on the due date are considered timely.
    - Direct card companies to provide on every statement, a phone and Internet address that a cardholder can access for payoff balances.
    - Prohibit card companies from charging late fees when a cardholder presents proof of mailing his/her bill within seven days of the due date.
    - Prevent card companies from using terms such as "fixed rate" and "prime rate" in a misleading or deceptive manner by establishing single, set definitions of those terms.

- Give cardholders who get pre-approved for a card the right to reject that card up until the moment they activate it without having their credit adversely impacted.
- Require card companies to offer consumers the option of having a fixed credit limit that cannot be exceeded.
- Prevent card companies from charging over-the-limit fees on a cardholder with a fixed credit limit.
- Direct card companies to fairly allocate payments on balances at different interest rates.
- Limit the amount of "over-the-limit" fees card companies are allowed to charge to three.
- Require that all fees for subprime cards, whose total fixed fees over a year exceed 25 percent of the credit limit, be paid up front before the card is issued.
- Improve existing data collection on industry profits, as well as card fees and rates and require this information to be presented to Congress every year. **Adopted by Voice Vote.**

- **Vote to Report:** Favorably Reported to the Full House, as Amended, by a Roll Call Vote of **39-27: R 2-27; D 37-0; I 0-0.**

CRS Report:
RL34393: The Credit Card Market: Recent Trends and Regulatory Proposals

GAO Reports:
(TBA)

CBO Report:
Cost Estimate: Ordered Reported by the Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit Hearing:
The Credit Cardholders' Bill of Rights: Providing New Protections for Consumers>>
April 17, 2008 Hearing — Subcommittee on Financial Institutions and Consumer Credit Hearing, Committee on Financial Services

- Opening Statement: Chair Maloney, Congressman Carson
- Archived Webcast

Witness Testimony:
Panel One
- The Honorable Carl Levin, United States Senator, State of Michigan
- The Honorable Ron Wyden, United States Senator, State of Oregon

Panel Two
- Mr. Steven Autrey, Fredericksburg, VA
- Ms. Susan Wones, Denver, CO
- Mr. Stephen M. Strachan, York, PA

Panel Three

- Ms. Sandra Braunstein, Director, Consumer Affairs Division, Board of Governors of the Federal Reserve System
- Mr. Marty Gruenberg, Deputy Director, Federal Deposit Insurance Corporation
- Ms. Julie Williams, Deputy Director and General Counsel, Office of the Comptroller of the Currency
- Mr. John Bowman, General Counsel, Office of Thrift Supervision \

Panel Four

- Mr. John P. Carey, Chief Administrative Officer and Executive Vice President, Citi Cards, Citigroup Inc.
- Mr. Larry Sharnak, Executive Vice President and General Manager, Consumer Cards, American Express Company
- Mr. Carlos Minetti, Executive Vice President, Cardmember Services and Banking, Discover Financial Services
- Mr. Travis B. Plunkett, Legislative Director, Consumer Federation of America
- Ms. Linda Sherry, Director, National Priorities, Consumer Action
- Mr. Ed Mierzwinski, Consumer Program Director, U.S. Public Interest Research Group

The Credit Cardholders' Bill of Rights: Providing New Protections for Consumers>>
March 13, 2008 Hearing — Subcommittee on Financial Institutions and Consumer Credit Hearing, Committee on Financial Services

- Opening Statement: Chair Maloney, Congressman Carson
- Archived Webcast

Witness Testimony:

- Ms. Elizabeth Warren, Leo Gottlieb Professor or Law, Harvard Law School
- Mr. Greg Baer, Deputy General Counsel, Regulatory and Public Policy, Bank of America
- Mr. Adam J. Levitin, Associate Professor of Law, Georgetown University Law Center
- Mr. John Finneran, General Counsel, Capital One
- Mr. Lawrence Ausubel, Professor, Department of Economics, University of Maryland
- Ms. Carter Franke, Marketing Executive, JPMorgan Chase
- Mr. Oliver I. Ireland, Partner, Morrison & Foerster
- Ms. Katherine M. Porter, Associate Professor, The University of Iowa College of

Organization Statements:
(TBA)

Administration Position:
(TBA)

Fact Sheets & Talking Points:
HR 5244 Summary- Financial Services Committee

Press Releases, News Articles & Related Information:
(TBA)

Other Resources:
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